



Comptroller General
of the United States

Washington, D.C. 20548

S. Rittack

Decision

Matter of: Konsal Research Associates

File: B-236467.3

Date: December 28, 1989

DIGEST

Protest which is not filed within 10 working days of when protester knew of the basis of its protest (allegedly improper cancellation of solicitation) is dismissed as untimely.

DECISION

Konsal Research Associates (KRA) protests the cancellation of request for proposals (RFP) No. L/A 89-22 issued by the Department of Labor (DOL) for services to develop a demonstration project to investigate family responsive policies for small businesses experiencing labor shortages. KRA alleges that the cancellation was in "retaliation for" an earlier protest filed by another firm. In addition, KRA request that it be awarded its protest and proposal preparation costs.

We dismiss the protest.

The RFP called for the submission of initial offers by August 8, 1989, and at closing, the agency had received offers from some seven firms. After initial review and evaluation of the offers submitted, the agency found that three of the proposals did not conform to the RFP's requirements and that two of the remaining four proposals were not technically acceptable.

Shortly after this initial evaluation, the agency's procurement office was advised on August 28 that the funds which were to have supported the acquisition were no longer available for obligation. In this regard, DOL informs us that the user agency had erroneously believed the funds to be available for obligation until September 30 when in fact, the funds were only available for obligation until June 30. In light of these circumstances, the agency decided to

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cancel the solicitation and, by letters dated August 30, so informed all offerors. The record shows that the protester received the cancellation notice on September 6. KRA filed its protest in our Office on September 27.

The agency argues that KRA's protest should be dismissed as untimely since it was not filed within 10 working days of when the protester was informed of the agency's decision to cancel the RFP. We agree. Our Bid Protest Regulations provide that a protest must be filed in our Office within 10 working days of when the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1989). Here, KRA did not file its protest until 15 working days after it learned of its basis for protest.

KRA responds that it did not timely file its protest because it was unaware of our timeliness requirements. In this regard, however, a protester's lack of actual knowledge of our regulations does not excuse an otherwise untimely filing since our regulations are published in the Federal Register and thus protesters, as a matter of law, are presumed to have knowledge of their contents. See Oxford Place Office Park, B-234867, June 20, 1989, 89-1 CPD ¶ 579.

We point out, in connection with KRA's allegation, that an agency need only provide a reasonable basis for the cancellation of a negotiated procurement and that the lack of available funding is one such basis. See Cantu Services, Inc., B-219998.9; B-233697, Mar. 27, 1989, 89-1 CPD ¶ 306. Here, the record shows that the funding which was supposedly available for this acquisition could not in fact be obligated beyond June 30.

We dismiss KRA's protest and, accordingly, deny its request for protest and proposal preparation costs. 4 C.F.R. § 21.6(d); Carlisle Tire and Rubber Co., B-235413, May 12, 1989, 89-1 CPD ¶ 457.



Ronald Berger
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